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Paper No. 23

Mr. Ronald O. Neerings
Texas Instruments Incorporated
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Dallas TX 75265

In re Application of: Smith et al.)
Application No. 08/568,777)
Attorney Docket No. TI-22187) DECISION ON PETITION TO
Filed: December 7, 1995) WITHDRAWAL HOLDING OF
For: PORTABLE COMPUTER HAVING) ABANDONMENT UNDER 37 CFR §
AN INTERFACE FOR DIRECT) 1.181(a)
CONNECTION TO A MOBILE)
TELEPHONE)
)

This is a decision on the "Request to Withdraw Notice of Abandoned" (filed March 4, 2003), filed in response to a Notice of Abandonment (Paper No. 19, mail date January 10, 2003). The communication is treated as a petition under 37 C.F.R. § 1.181 requesting the Withdrawal of the Holding of Abandonment. (See MPEP § 711.03(c)).

BACKGROUND

- March 8, 2002 Board of Patent Appeals and Interferences decision (Paper No. 17)
- May 20, 2002 Form 90 mailed setting one-month non-extendable period to reply (Paper No. 18)
- June 20, 2002 One-month period for reply lapses
- July 26, 2002 Mr. Neerings' Declaration states Notice of Abandonment was received
- Jan 10, 2003 Notice of Abandonment mailed (Paper No. 19)
- March 4, 2003 Petition to withdraw holding of abandonment filed along with amendment to Claims 15-28, cancellation of Claim 29 and concurrence with examiner on cancellation of Claims 1-14.

ISSUES

Petitioners have submitted a petition, declarations by Mr. Ronald O. Neerings and Allen B. Kroger along with a copy of the TI legal database docket file computer screens. Applicants state they did not receive Paper No. 19 until a copy was faxed to applicants' representative on February 3, 2003. While Mr. Neerings' remarks state he received the copy of the Office letter

dated May 20, 2003, the Office understands this to be a typographical error since the paper at issue was mailed May 20, 2002. Mr. Neerings declaration includes a statement in section 5 that "Applicants received the Notice of Abandonment dated 07/17/02 on 07/26/02."

DECISION

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes the communication was properly mailed to the address of record. According to the MPEP § 711.03(c), the showing required to establish nonreceipt of an Office action includes the following:

- a) a statement from the practitioner that the Office action was not received,
- b) a statement from the practitioner that the file jacket and docket records were searched,
- c) a copy of the docket record at the address of record, and
- d) a reference to the docket record in the practitioner's statement.

Mr. Neerings, as the practitioner, has provided a declaration that is construed as indicating the practitioner has knowledge that the file jacket and docket records were searched; that the docket records provided are for the address of record. Mr. Neerings declaration references the docket record in his statement.

However, the declaration and docket evidence have created some confusion. Paragraph 5 of Mr. Neerings declaration suggests some Office mailing dated *July 17, 2002* was received on *July 26, 2002*. In addition, the two computer screens appear to be incomplete. No paper is listed with a July 2002 date; the apparent entry for the BPAI decision mailed 3/8/2002 is listed as "Request for" and shows a "Response Due Date" of April 8, 2002 but omits that it was a Board decision; and the abandonment appears to be listed as *March* 10, 2003 when in fact the abandonment had a mailing date of *January* 10, 2003. These apparent errors in the record keeping, along with the errors found in the remarks noted above require further clarification and supplemental statement by the practitioner in order to confirm what was, and was not, received by the practitioner.

Accordingly, the petition is **DISMISSED**.

If the petitioner desires further review of this decision, petitioner should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at 703-308-0269.

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